

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

ALONZO JERMONT ALLEN,

Petitioner,

v.

TOM DALBEC and J. RUIKKA,

Respondents.

ORDER

08-cv-577-slc

In an order entered in this case on October 24, 2008, I dismissed this case for petitioner's failure to state a claim upon which relief may be granted. Petitioner has now filed a notice of appeal. Because he has not paid the \$455 fee for filing an appeal, I presume he wishes to proceed in forma pauperis.

A district court has authority to deny a request for leave to proceed in forma pauperis on appeal under 28 U.S.C. § 1915 for one or more of the following reasons: the petitioner has not established indigence, § 1915(a)(1); the appeal is in bad faith, § 1915(3); or the petitioner is a prisoner and has earned three strikes, § 1915(g). Sperow v. Melvin, 153 F.3d 780 (7th Cir. 1998).

In Lucien v. Roegner, 682 F.2d 625, 626 (7th Cir. 1982), the court of appeals

instructed district courts to find bad faith where a petitioner is appealing the same claims the court found to be without legal merit in denying petitioner leave to proceed on his complaint. Lee v. Clinton, 209 F.3d 1025 (7th Cir. 2000). Because petitioner is attempting to raise on appeal the same legally meritless claim he raised in his complaint in this court, I must certify his appeal as not being taken in good faith. Therefore, his request for leave to proceed in forma pauperis on appeal will be denied.

If petitioner intends to challenge this court's certification that his appeal is not taken in good faith, he has 30 days from the date he receives this order in which to file with the court of appeals a motion for leave to proceed in forma pauperis on appeal. His motion must be accompanied by a copy of the affidavit prescribed in the first paragraph of Fed. R. App. P. 24(a) and a copy of this order.

ORDER

IT IS ORDERED that petitioner's request for leave to proceed in forma pauperis on

appeal is DENIED and I certify that petitioner's appeal is not taken in good faith.

Entered this 7th day of November, 2008.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge